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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of ) WT DOCKET NO. 94-147  
 )  
JAMES A. KAY, JR. )  
 )  
Licensee of one hundred sixty four Part 90 )  
Licenses in the Los Angeles, California, Area )

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To: Administrative Law Judge  
Richard L. Sippel

**WIRELESS TELECOMMUNICATIONS BUREAU'S**  
**OPPOSITION TO MOTION FOR PROTECTIVE ORDER**

1. On March 3, 1995, James A. Kay, Jr. ("Kay") filed a Motion for a Protective Order. The Wireless Telecommunications Bureau hereby opposes such relief. In support whereof, the following is shown.

2. Kay claims that a protective order is necessary to guard against the dissemination of information sought by the Bureau in Interrogatory No. 4 of the Bureau's First Set of Interrogatories, and in Document Request Nos. 4 and 5 of the Bureau's First Request for Documents. Specifically, Kay argues, among other things, that disclosure of the identity of his customers and the prices he charges them for his services would make it "easy" for competitors to go directly to Kay's customers to solicit their business. Kay also speculates that an unidentified competitor in an undisclosed California lawsuit "may" seek to obtain the information that Kay turns over to the Bureau. Kay further opines that he has no confidence

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that the Commission staff will protect the confidentiality of the information that he provides. In a sample protective order which Kay urges the Presiding Judge to adopt, Kay requests, among other things, that the Presiding Judge restrict the extent to which the Bureau may use any of the information that Kay turns over in response to the subject interrogatory and document requests.

3. The Bureau submits that Kay's request for a protective order is unreasonably restrictive. Under the terms of Kay's sample protective order, the Bureau would be restrained from making legitimate use of the subject materials, for example, by questioning witnesses and potential witnesses about the information. Of course, such a restriction is totally inconsistent with the development of a full and complete record in this proceeding and unreasonably impedes the Bureau's ability to present and prosecute its case. The Bureau believes that a blanket ban on the dissemination of information provided by Kay is manifestly outweighed by the compelling public interest in ensuring that the record is full and complete and the issues are properly resolved. Furthermore, Kay has shown no justification whatsoever for obtaining at this time a blanket exemption from release of the information under the Freedom of Information Act ("FOIA"). Indeed, Kay has not even attempted to comply with the requirements for requesting confidentiality under § 0.459 of the Commission's Rules.

4. In the final analysis, Kay's request is a transparent attempt to craft a response to certain of the Bureau's discovery requests while precluding the Bureau from making

reasonable use of the information he provides. It has more to do with undermining the Bureau's prosecution of this case than simply protecting proprietary information, as Kay claims. Although the information in question relates to Kay's business and may arguably invoke some proprietary concerns, it is not a basis for impeding the Bureau's use of the information *in this instance*. To the contrary, the information sought by the Bureau goes to the essence of whether Kay unlawfully inflated the number of customers and/or their mobile units in order to obtain frequencies to which he was not otherwise entitled. The information relates directly to the issues in this case, and full use of the information by the Bureau is manifestly required.

5. Assuming, arguendo, that even a limited protective order is warranted for some of the information in question, such a protective order should be narrowly tailored so as to strike a proper balance between the interest of the public and Kay's private, pecuniary concerns. Although the information in question may ultimately fall within a FOIA exemption, the Bureau should not be handicapped in meeting its burdens in this case, or restrained from disseminating the information to potential or actual witnesses, or otherwise

frustrated in its attempts to use the information to the full extent necessary to present and prosecute its case in this proceeding.

Respectfully submitted,  
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March 14, 1995

## CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Complaints and Investigations Branch, Mass Media Bureau, certify that I have, on this 14th day of March 1995, sent by regular First Class United States mail, copies of the foregoing "Wireless Telecommunications Bureau's Opposition to Motion for Protective Order" to:

Dennis C. Brown, Esq.  
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